

No. 14/13/87-6Lab./160.- In pursuance of the provisions of section 17 of the Industrial Disputes Act, 1947 (Central Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of Presiding Officer, Industrial Tribunal-cum-Labour Court, Ambala in respect of the dispute between the workman and the management of Secretary, H.S. E.B., Panchkula *versus* Shri Roshan Lal.

IN THE COURT OF SHRI S.R. BANSAL (ADDITIONAL DISTRICT AND SESSIONS JUDGE)
PRESIDING OFFICER, LABOUR COURT, AMBALA

Reference No. 228 of 89

WORKMAN SHRI ROSHAN LAL, SON OF SHRI BABU RAM, THROUGH 126, LABOUR
COLONY, YAMUNA NAGAR

and

THE MANAGEMENT (1) SECRETARY, HARYANA STATE ELECTRICITY BOARD,
SECTOR 6, PANCHKULA (2) EXECUTIVE ENGINEER, POWER HOUSE, HARYANA
STATE ELECTRICITY BOARD, BHURKALAN, (JAGADHRI)

Present :

Workman Representative—Shri Jasbir Singh.

Management Representative—Shri D.R. Batra.

AWARD

In exercise of the powers conferred by clause (c) sub of section 1 of section 10 of the Industrial Disputes Act, 1947 (for short called as the Act), the Governor of Haryana referred the following dispute between the workman Shri Roshan Lal and the management (1) Secretary, Haryana State Electricity Board, Sector 6, Panchkula (2) Executive Engineer, Power House, Haryana State Electricity Board, Bhurkalan (Jagadhri) to this court for adjudication,—*vide* Haryana Government notification bearing no. 25702—07, dated the 17th June, 1989 :—

Whether the termination of the services of Shri Roshan Lal is valid and justified ? If not so, to what relief is he entitled ?

The workman served a demand notice dated 23rd February, 1989 under section 2-A of the Act. The conciliation proceedings were taken up by Labour Officer-cum-Conciliation Officer, the same having failed the appropriate government made the above-mentioned reference.

On receipt of the reference notices were issued to the workman as well as to the management. The workman appeared and stated that his demand notice may be treated as his claim statement. The stand of the workman in the demand notice is that he was appointed by the Executive Engineer, Power House No. 4, Haryana State Electricity Board, Bhurkalan as a daily wages worker in the month of April, 1981 and his services were terminated in the month of April, 1984 without any written notice and without payment of retrenchment compensation. It is also alleged that new persons have been recruited as daily wages worker in violation of section 25-H of the Act. The workman demanded his reinstatement with continuity of service and back wages.

The management appeared and filed written statement and pleaded that under section 82 of the Electricity Supply Act no proceeding can be filed against the officer of the Board and therefore the reference is not maintainable. It was alleged that the reference is bad on account of delay and laches, having been served after a period of about five years from the date of alleged termination. On merits it was pleaded that the workman voluntarily of his own abandoned his job and therefore there was no question of prior notice or retrenchment compensation.

The workman submitted replication controverting the allegations of the management in the written statement filed. On the pleadings of the parties the following points in issues were laid down for decision :—

- (1) Whether the impugned termination of services of the workman is invalid ? OPW
- (2) Whether the reference is not maintainable ? OPM
- (3) Whether the reference is bad due to delay and laches ? OPM
- (4) Relief.

Parties led evidence. I have heard the representatives of the parties. My issuewise findings are as under :—

Issue Nos. 1 and 3 :

Both these issues are inter-linked and are being taken up together.

According to the workman he served with the management from April, 1981 to April, 1984 while appearing as WW-1 he stated that his services were terminated without any notice or payment of retrenchment compensation. He stated that on 30th January 1987 he made application Ex.W-1 which was sent by him to the SDO who, in turn sent him to Divisional Accountant and the Divisional Accountant returned the same to the S.D.O. He then stated that on 31st January, 1989 he served final notice Ex.W-2 to the management but the management did not choose to give any reply with a further statement that ultimately he served a demand notice on the basis of which failure report Ex.W-3 was submitted. During cross-examination he clarified that he used to be marked present by Shri D.R. Malik, Junior Engineer. On the other hand the stand of the management as reflected by the statement of MW1 Shri Anil Mittal, Assistant Executive Engineer is that the workman served with him from September, 1981 to October, 1982. He produced Ex.M-1 to Ex.M-20 copies of muster roll and stated that in the month of October, 1982 the workman worked for 12 days and thereafter left the job and accordingly an entry was made in the muster roll showing him as left the job. He also stated that Ex.M-21 is the muster roll of November, 1982 in which the name of workman does not find mentioned. Similarly name of workman does not find mentioned in muster roll Ex.M-22 relating to the month of December, 1982. He also produced Ex.M-23 to Ex.M-28 copies of muster roll for the subsequent months stating that the name of the workman does not find mentioned in all these copies. He lastly produced Ex.M-29 extract of all these muster rolls. He maintained that the services of workman were never terminated and left the job of his own. Mr. Jasbir Singh, learned representative of the workman has cited Municipal Corporation of Delhi *versus* Sukhvir Singh 1994 (4)-SCT-98 to argue that if the workman had abandoned the employment certainly an enquiry should have been held against him but no such enquiry was conducted and therefore this plea of management cannot be accepted.

I have gone through the facts of the reported case. The plea raised in the reported judgement is that as to whether the workman was employed for a limited period. The Hon'ble Delhi High Court observed that the workman was not employed for a specific period. The question of enquiry regarding abandonment of service is not a ratio of this judgement. In such a situation the observations made are of no help to this case.

It is admitted position on the record that the alleged termination took place in April, 1984 and the demand notice served on 23rd February, 1989 after a period of about five years. The workman has tried to prove that he made application Ex.W-1 to the Executive Engineer on 30th January, 1987 and thereafter gave final notice dated 31st January, 1989 Ex.W-2. In my opinion Ex.W-1 and Ex.W-2 are forged documents. The workman in his statement stated that he gave Ex.W-1 to the Executive Engineer who sent the same to the S. D. O. who in turn sent to Divisional Accountant and Divisional Accountant returned the same to the S.D.O. who sent him to the Executive Engineer. Ex.W-1 however bears only an endorsement to only one person i.e. Divisional Accountant. It is not clear who made this endorsement. The application of course addressed to the Executive Engineer. If it is so the Executive Engineer never marked it to the S.D.O. Moreover it appears that the endorsement made was on 30th January, 1989. The final notice Ex.W-2 was given by the workman on the next date. There is thus no explanation for the delay. It was held in Punjab State Electricity Board *versus* State of Punjab-1993(1)-SCT-103.

“Industrial Disputes Act 1947 Section 10-Reference/Delayed demand notice—Delay can be fatal to the claim under Section 10 of the Industrial Disputes Act even if it is held that the termination was bad in law. The general law provided three years limitation for setting up a claim in the court, the workman cannot be put on a higher pedestal. The management has to suffer adverse consequences while facing delayed claims has to be rejected.

The ratio of this authority is fully applicable to the facts of the present case and it is accordingly held that the workman is not entitled to any relief. On the basis of the circumstances adduced on the file it is thus quite evident that the services of the workman were never terminated. On the other hand the workman voluntarily abandoned his job. In any case the claim of the workman is barred due to delay and laches. He is not entitled to any relief. The findings on both these issues are, therefore, returned against the workman and in favour of the management.

Issue No. 2 :

The onus to prove on this issue was on the management. The management has not proved this issue nor was it argued. The finding on this issue is, therefore, returned against the management.

Relief :

In the end, it is held that the workman is not entitled to any relief.

The reference shall stand answered accordingly.

S. R. BANSAL,

The 9th December, 1994.

Additional District and Sessions Judge,
Presiding Officer, Labour Court, Ambala.

Endorsement No. 1969, dated the 30th December, 1994.

Forwarded, (four copies), to the Financial Commissioner and Secretary to Government of Haryana, Labour and Employment Departments, Chandigarh, as required under section 15 of the Industrial Disputes Act, 1947.

S. R. BANSAL,

Additional District and Sessions Judge,
Presiding Officer, Labour Court, Ambala.

No 14/13/87-6Lab./161—In pursuance of the provisions of section 17 of the Industrial Disputes Act, 1947 (Central Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of Presiding Officer, Industrial Tribunal-cum-Labour Court, Ambala in respect of the dispute between the workman and the management of the T. C., Haryana, Chandigarh *versus* Shri Labh Singh.

IN THE COURT OF SHRI S. R. BANSAL (ADDITIONAL DISTRICT AND SESSIONS JUDGE),
PRESIDING OFFICER LABOUR COURT, AMBALA

Reference No. 388 of 1989

SHRI LABH SINGH, CONDUCTOR, SON OF SHRI KESHO RAM, VILLAGE SHERPUR, P.O.
BADHAULI, TEHSIL NARAINGARH, DISTRICT AMBALA .. *Workman*

and

1. TRANSPORT COMMISSIONER, HARYANA, CHANDIGARH

2. GENERAL MANAGER, HARYANA ROADWAYS, AMBALA .. *Management.*

Present :

WR—Shri Parveen Kumar Garg.

MR—Shri Rattan Singh, ADA.

AWARD

In exercise of the powers conferred by clause (c) of sub-section (1) of section 10 of the Industrial Disputes Act, 1947 (for short called as 'Act'), the Governor of Haryana referred the following dispute between the workman Shri Labh Singh and the management (1) Transport Commissioner, Haryana, Chandigarh and (2) General Manager, Haryana Roadways, Ambala to this court for adjudication,—*vide* Haryana Government notification bearing no. 49360—365, dated the 30th October, 1989 :—

Whether the termination of the services of Shri Labh Singh is valid and justified ? If not so, to what relief is he entitled ?

The workman raised an industrial dispute by serving a demand notice, 12th July, 1989 under section 2-A of the Act. The conciliation proceedings were taken up by Labour Officer-cum-Conciliation Officer. The same having failed the appropriate Government made the above-mentioned reference.

On receipt of the reference notices were issued to the workman as well as to the management. The workman appeared and stated that his demand notice may be treated as his claim statement. The respondent also filed the written statement to the demand notice/claim statement.

The workman submitted replication controverting the allegations of the written statement filed and retreated those made in the demand notice/claim statement. On the rival contentions of the parties the following points in issues were laid down for decision :—

- (1) Whether the termination of the services of Shri Labh Singh is valid and justified ? If not so, to what relief is he entitled ? OPM
- (2) Whether the workman's claim is time barred ? OPM
- (3) Relief.

Parties were permitted to leave evidence by way of tendering of affidavits and documents. The parties have filed their affidavits.

I have heard the representatives of the parties. My issuewise findings are as under :—

Issue No. 1 :

Both the parties led their respective evidence by filing affidavits. While the workman Shri Labh Singh filed his own affidavit Ex. W-1; the respondent-management filed the affidavit of Shri P.R. Bishnoi, General Manager, Haryana Roadways, Ambala Ex. M.1 The workman also filed his counter affidavit Ex. W-2. In his affidavit Ex. W-1, the workman deposed that he completed 240 days continuous service in the Haryana Roadways, Ambala and his services were terminated without following the procedure as laid down in section 25-F and 25-N of the Industrial Disputes Act, 1947. He further Stated that the impugned order of termination was passed by the respondent-management as a measure of penalty without holding any domestic enquiry. In his affidavit Ex. M-1, Shri P. R. Bishnoi, General Manager somehow deposed that the workman was appointed as conductor from 1st April, 1981 to 30th June, 1981 for a period of three months on *ad hoc* basis and his services were further extended from 1st July, 1981 to 30th September, 1981. According to him he was again appointed w. e. f. 15th October, 1981 and since his services were not required he was ordered to be terminated w. e. f. 19th October, 1981. It was categorically denied in his affidavit that the services were discontinued on account of involvement of the workman in any fraud case. The workman in his counter-affidavit Ex. W-2 has not categorically denied the version in para 1 of the affidavit of Shri P. R. Bishnoi, General Manager, Haryana Roadways, Ambala, which clearly proves that the workman had not worked for 240 days in a period preceding twelve months from the date of his discontinuance from service. Resultantly the services of the workman were rightly dispensed with by the respondent-management as the workman had worked for hardly 185 days and had not completed 240 days for enabling him to invoke the provisions of the Act. The termination of the workman is thus valid and legally justified and this issue is accordingly decided against the workman and in favour of the respondent-management.

Issue No 2 :

This issue was not pressed and thus needs no separate finding.

Relief :

In view of the finding on issue no. 1, the workman is not entitled to any relief.

The reference shall stand answered accordingly.

S. R. BANSAL,

The 8th December, 1994.

Additional District and Sessions Judge,
Presiding Officer, Labour Court, Ambala.

Endorsement No. 1961, dated the 30th December, 1994.

Forwarded (four copies), to the Financial Commissioner and Secretary to Government of Haryana, Labour and Employment Departments, Chandigarh as required under section 15 of the Industrial Disputes Act, 1947.

S. R. BANSAL,

Additional District and Sessions Judge,
Presiding Officer, Labour Court, Ambala.